In the Supreme Court of the United States

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,
Plaintiff in Error,

AND

C. J. MINOR, F A. DICKSON AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

vs.

LUCK LAND COMPANY, A CORPORATION,
Defendant in Error.

Motions to Dismiss or Affirm and Defendant in Error's Brief Thereon.

MARSHALL A. SPOONER,
Attorney for Defendant in Error.

Review Pub. Co., 513 Fourth Ave. So., Minneapolis

INDEX

Appendix.

Cases Referred to.

In the Supreme Court of the United States

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,

Plaintiff in Error,

AND

C. J. MINOR, F. A. DICKSON AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

vs.

LUCK LAND COMPANY, A CORPORATION,

Defendant in Error.

MOTIONS TO DISMISS OR AFFIRM.

Now comes Luck Land Company, the defendant in error, by Marshall A. Spooner, its counsel, and moves the Court to dismiss the writ of error herein on the ground that the Court had and has no jurisdiction of this case, or to affirm the judgment of the Supreme Court of Minnesota upon the ground that, although the record may show that this Court has jurisdiction, yet it is manifest that the writ of error was taken for delay only, and that the questions on which the decision of the cause depend are so frivolous as not to need further

argument.

MARSHALL A. SPOONER,
Attorney and Counsel for Defendant in Error.

NOTICE OF SUBMISSION OF MOTIONS TO DISMISS OR AFFIRM.

To F. A. Dickson, Plaintiff in Error, and his Attorneys, Frank Healy, Esq., Charles C. Haupt, Esq., and Clyde R. White, Esq.:

Sirs: Please take notice that on the annexed papers herein, and on all the files and proceedings herein, I shall submit to the Supreme Court of the United States, at a stated term thereof on the 9th day of October, 1916, at the Capitol in the City of Washington, in the District of Columbia, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies; and that I shall submit with said motions and in support of the same the statement of facts, argument and other papers hereto annexed.

Bemidji, Minnesota, August 22, 1916.

MARSHALL A. SPOONER,
Attorney and Counsel for Defendant in Error.

Service of copies of the foregoing motions, notice, and the statement of facts, argument and other papers above mentioned hereby acknowledged this ..... day of ....., 1916.

.....

.....

Attorneys for Plaintiff in Error.

STATEMENT OF THE FACTS.

To determine adverse claims to a tract of allotted and patented land within the White Earth Indian reservation in Minnesota this action was brought by defendant in error against plaintiff in error. Both parties claim under the Indian patentee, a mixed-blood Chippewa, and the principal point in controversy concerns the validity of conflicting conveyances made by the Indian, as affected by his actual minority at the time he executed the two deeds under which the plaintiff in error claims, and by the fact that the patent issued before the Indian actually became of age; the Land Department's finding of adulthood having been based upon false affidavits as to his age.

It is not disputed that the Indian became of age in April or May, 1910. Hence, he was a minor when, on April 24, 1908, he applied for a patent, and when, on the same day, he gave the first deed under which the plaintiff in error claims; when, on August 6, 1908, the patent was issued, and when, on January 17, 1910, the other deed under which plaintiff in error claims was executed. The deeds under which we claim were executed after the Indian actually became of age—November 23, 1911 and July 2, 1912, respectively.

For a concise and accurate statement of the theory on which the case was tried and was presented to the Minnesota Supreme Court on appeal, we quote from the opinion of the latter court, which will be found in full in the Appendix hereto:

> "On the theory that the Indian had a right to avoid these deeds [those under which defendant-

> plaintiff in error claims] after he became of age, and did so when he gave the deeds under which the plaintiff [defendant in error] claims, it was held that the plaintiff had the title. *The finding as to the age of the Indian is not assailed as being against the evidence, nor does defendant question the result reached, if it can be held that it was open to prove that the Indian was a minor. The claim of defendant is that the United States when it issued the patent, found that the Indian was an adult, and that this finding is conclusive.*"

The trial court and the state supreme court determined that the patent was conclusive as to the Indian's adulthood at the time the patent issued, for the purpose of the *vesting of title in him*, but that the patent does not preclude inquiry into the age of the Indian patentee "for the purpose of determining the validity of a *conveyance from him.*" And it is against this holding that plaintiff in error's assignments of error are directed. (See the Appendix hereto).

Therefore, the questions presented by our motions are:

(1) Does a holding that the patent to the Indian is not conclusive as to his being of age at the time the patent issued, as concerns the validity of conveyances from him after vesting of title in him, present a Federal Question, so as to give this Court jurisdiction?

(2) If so, is the holding so plainly correct that plaintiff in error's contentions to the contrary are so frivolous as not to need further argument?

ARGUMENT AND AUTHORITIES.

The Writ Should be Dismissed for Want of Jurisdiction.

We respectfully assert that no Federal Question is presented by the writ of error.

Except as the question may be controlled by the hereinafter cited statutes relating to Indian affairs, the plaintiff in error does not deny that it is the established rule in Minnesota that the execution of a deed within a reasonable time after arriving at majority is a disaffirmance of a prior deed of the same land to another person during infancy.

Dixon v. Merrit, 21 Minn. 196.

Dawson v. Helmes, 30 Minn. 107.

We take the position that there has not been, even if there could be, any federal interference with the state's right to pass exclusively upon the capacity of the grantors to convey lands which have passed into private and fee simple ownership.

Division of State and Federal Powers.

The legal power of the state to regulate conveyances of lands which have come under private ownership is just as great as the power of the United States to determine when public lands shall be granted to private owners.

> "The law of the place in which land is situate governs the transfer of land."
>
> 13 *Cyc.* 526, cited numerous authorities.

"It is well settled that to the law of the state in which land is situated we must look for rules which govern its alienation and transfer."

Robards v. Marley, 80 Ind. 185, 187.

"All questions of a grantor's capacity to convey are to be determined with reference to the law of the place where the land is situated."

9 *Am. & Eng. Enc.* (2nd Ed.) 109.

"The state laws are supreme within the state on all subjects to which they constitutionally relate. The federal government cannot gainsay such laws nor resist their authority."

1 *Lewis' Sutherland on Statutory Construction* (2nd Ed.) 22.

The Federal Statutes Relied on by Plaintiff in Error Show Want of Jurisdiction.

That Congress has not attempted to control the validity of conveyances from Indian patentees such as are here concerned, and has expressly left that as a matter for control by the state, appears from the language of the following statutes relied upon by plaintiff in error in all of his assignments of error.

Act Cong. Feb. 8, 1887, sec. 5; 24 Stat. at L., 388, 3 Fed. Stat. Ann. 492:—A *trust* patent must declare that the United States will hold the land "in trust for the sole use and benefit of the Indian * * *, or in case of his decease, of his heirs *according to the laws of the state or territory where such land is located* and that at the expiration of such [trust] period, the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee, *discharged of said trust* and free of all charge or encumbrance whatsoever; * * *"

Act Cong. May 8, 1906, 34 Stat. at L. 182:—"* * * *When the lands have been conveyed to the Indians by patent in fee,* * * * then each and every allottee shall have the benefit of and *be subject to all the laws, both civil and criminal, of the state* or territory in which they may reside; * * * provided, further, that *until the issuance of the fee simple patents,* all allottees to whom trust patents shall hereafter be issued shall be *subject to the exclusive jurisdiction of the United States.*"

Clapp Amendments, Act Cong. June 21, 1906 (34 Stat. at L. 325, 353) and Act March 1, 1907 (34 Stat. at L. 1015, 1034):—"That all restrictions as to the sale * * * for [of?] allotments within the White Earth Reservation * * * held by *adult* mixed blood Indians are hereby removed, and the trust deeds * * * are hereby declared to *pass the title* in fee simple, or *such mixed bloods,* upon application, shall be entitled to receive a patent in fee simple for such allotments."

Since these statutes, being the ones relied upon by plaintiff in error in his assignments of error, do not purport to interfere with the laws of the state under which the grantor of a valid conveyance must be an adult, and, on the contrary, expressly provide on issuance of patents the Indians shall be subject to the state laws, and clearly show that at that time the jurisdiction of the United States shall terminate, where is there any ground for saying, as is asserted in the assignments of error herein, that the validity of any federal statute or authority was questioned in this case?

It was admitted by us, and declared by the courts below, that the patent in this case was conclusive evi-

dence of title in the patentee. Do not this admission and declaration, and the fact that the only issue in the case was as to the validity of conveyances *from*, rather than *to*, the Indian avoid any Federal Question?

Since the state supreme court gave the full force to the cited federal statutes to which they are entitled—as vesting fee simple title in the Indian and relinquishing to the state the federal government's jurisdiction over the land from that time forth—there has been no violation of U. S. Const. art. VI, which requires state judges to respect the federal laws and constitution, as asserted under the third assignment of error.

The provision of U. S. Const. art. IV, sec. 3, giving Congress power to control "property belonging to the United States," and mentioned under the same assignment of error, is plainly inapplicable to Indian lands held in trust for the allottees thereof. But, if the provision could be said to be applicable to such lands, it must be clear that Congress, in the particular federal statutes above cited, has surrendered its control at the moment title has vested in the Indian under a fee simple patent.

Likewise, there are two obvious answers to plaintiff in error's reliance in the third assignment of error on the authority given Congress, under Const. art. I, sec. 8, to regulate commerce with the Indian tribes.

(1) The provision does not apply to the sale of lands patented to Indians, as in this case. "Commerce with the Indian tribes," as used in the Constitution, relates only to the sale, exchange and transportation of *commodities*.

United States v. Holliday, 70 U. S. (3 Wall.) 407,

409.

Hopkins v. United States, 171 U. S. 578.

(2) Congress has rendered Indian patentees subject to state laws, as seen in the provision of Act Cong. Feb. 8, 1887, *supra,* for discharge of the Government's trust on issuance of a fee simple patent, and for succession "according to the laws of the state"; and as shown by the provisions of Act May 8, 1906, *supra,* that on issuance of such patent, each allottee shall become subject to state laws, and that exclusive jurisdiction of the United States shall exist to that point only.

That the mere fact that the common title under which both parties hereto claim rests on a federal patent presents no Federal Question is well established by the authorities cited below. The point involved in this action relates to the validity of conveyances which are plainly governed by state law because taking effect after the jurisdiction of the United States, under the federal statutes cited, had been terminated by issuance of a fee simple patent to the conveying Indian.

AUTHORITIES.

In dismissing the writ of error in *Miller's Executors v. Swann,* 150 U. S. 132, because the judgment below rested upon a construction by the state court of a statute of the state, which was sufficiently broad to sustain the judgment, the court said (p. 137):

> "A State * * * may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the *acts of Congress,* the rules of the Federal

courts, and *the practices of the Land Department, and yet the questions for decision would not be of a Federal character.* The inquiry along Federal lines is only incidental to a determination of the local question of what the State has required and prescribed. The matter is one of state rule and practice. The facts by which the state rule and practice are determined may be of a Federal origin."

Congress granted swamp lands within Illinois to that state, and *Cook County v. Calumet & Chicago Canal Co.*, 138 U. S. 635, involved a construction of a state grant of such lands to counties. In dismissing a writ of error, the United States Supreme Court said:

"The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. The validity of the authority here was not primarily denied, and the denial made the subject of direct inquiry."

The decision in this case proceeded on the ground that the acts of the Illinois legislature were in harmony with the act of Congress, and that the state court's decision was not adverse to a title specially set up or claimed under an authority exercised under the United States, nor against the validity of such an authority.

In holding that the United States Supreme Court has no jurisdiction over the decision and judgment of a State court upon adverse claims to real estate made under a common grantor whose title was derived from the United States and is not in dispute, this Court said in *People ex rel. Hastings v. Jackson*, 112 U. S. 233, 237:

"The case is clearly governed by *Romie v. Casanova*, 91 U. S. 379, and *McStay v. Friedman*, 92 U.

S. 723, in which it was decided that in a suit for the recovery of lands, *where both parties claimed under a common grantor whose title from the United States was admitted, this court had no jurisdiction* for the review of the decisions of a State court upon questions relating only to the title acquired by the several parties, under their respective grants, from the common grantor, and which were not in themselves of a federal character.

"Some reliance was had in the argument on the act of Congress * * * 'to quiet land titles in California,' but that act * * * *purports only to confirm the title of the State* * * *. No attempt is made in that act to provide for the settlement of the rights of conflicting claimants under the State. *Congress contented itself with the confirmation of the State's title, and left all who claimed under that title to their remedies in the courts or other tribunals provided by law for that purpose.* It follows that we have no jurisdiction of this case, and it is accordingly dismissed."

In *Chever v. Horner*, 142 U. S. 122, the plaintiff and the defendant in ejectment in a state court both claimed under an entry under a Federal townsite act. Defendant claimed under a deed executed by a probate judge, and delivered, several years before another deed was executed to plaintiff by the probate judge's successor. The older deed was assailed as being defective for noncompliance with the requirements of a territorial statute, prescribing rules for the issuance of such deeds. The state supreme court held that the deed, being regular on its face, was not subject to collateral attack.

In dismissing a writ of error, this Court held that the decision of the state court proceeded upon a proper construction of a territorial law, without regard to any right, title or privilege of the plaintiff under an act of Congress. The court said (p. 127):

"And the rulings in regard to the deeds issued by the probate judges were rulings not involving the denial of a title, right or privilege specially set up under the acts of Congress, by Chever [plaintiff] as against Horner, but compliance with requirements of the territorial act. The question was whether, under the law of Colorado, the title which had passed from the United States to the probate judge, passed from Judge Downing to Hughes [defendant's predecessor] or from Judge Kingsley to Chever. There was no pretense that the proceedings prescribed by the territorial act were not in due execution of the trust imposed by the townsite acts, and the conclusion reached was based purely upon the local law. BOTH PARTIES ADMITTED THE TITLE OF THE PROBATE JUDGE, AND THE REAL CONTROVERSY RELATED TO THE TRANSFER OF THAT TITLE TO ONE PARTY OR THE OTHER. Under these circumstances the writ of error cannot be sustained, and it must be dismissed."

In *New Orleans Waterworks Co. v. Louisiana*, 185 U. S. 336, 344, 345, it was said:

"It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgments of state courts there must be something more than a mere claim that a Federal question exists. There must, in addition to the simple setting up of the claim be some color therefor, or, in other words, the claim must be of such a character that its mere assertion does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a Federal question was plainly set up. Thus in *Bolinger v. Hartogen*, 6 Wall. 238, the Chief Justice (at page 241) said: 'Something more than a bare assertion of such an authority seems essential to the jurisdiction of this court. The authority is created by the act to one having a real existence, derived from competent governmental power.' This

case arose under the twenty-fifth section of the *Judiciary Act*, and jurisdiction was sought to be maintained upon the assertion that the validity of an authority exercised under the United States was drawn in question, and the decision was against its validity. It was held not sufficient to make the claim, but there must be some color of foundation for its assertion.

"In *New Orleans v. New Orleans Waterworks Company*, 142 U. S. 79, upon a motion to dismiss the writ of error on the ground that no Federal question was involved, it was said by the court (page 87): 'While there is in the amended and supplemental answer of the city a formal averment that the Ordinance No. 666 impaired the obligation of a contract arising out of the act of 1877, which entitled the city to a supply of water free of charge, the bare averment of a Federal question is not to all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.'

"Again, in *Gamble v. Western Land Company*, 167 U. S. 651, upon a like motion to dismiss the writ of error, the court said: '* * * a real and not a fictitious Federal question is essential to the jurisdiction of this court over the judgment of state courts,' citing the two cases just above referred to.

"In *St. Joseph & Grand Island Railway Company v. Steele*, 167 U. S. 659, it was said by the court (page 662):

"'We cannot accede to the proposition that by reason the acts of Congress, which authorized the construction of the bridge in question, gave the right to build a railroad and rail bridge, the unrestricted power of the State to tax did not extend to the bridge in both respects. For we are agreed that the making of such construction raised a Federal question of a character to confer original jurisdiction in the Circuit Court of the United States, the

every mere allegation of the existence of a Federal question in a controversy will suffice for that purpose. There must be a real, substantive question, on which the case may be made to turn.'

"Although the above case relates to the jurisdiction of the Circuit Court, yet, so far as this question is concerned, the principle is the same in both courts.

"And in *Wilson v. North Carolina*, 169 U. S. 586, it was held that there must be a real and substantial Federal question existing in order to give this court jurisdiction to review a judgment of a state court, and if the question raised were so unfounded in substance that the court would be justified in saying there was no fair color for the claim that it was of a Federal nature, the writ would be dismissed.

"These cases show the rule and its limitations, and where by the record it appears that although a claim of a Federal question had been plainly made, if it also clearly appear that it lacked all color of merit, and had no substance or foundation, the mere fact that it was raised was not sufficient to give this court jurisdiction."

The nature of the taxable interest of a railway company in unpatented lands, expressly made subject to taxation with the assent of Congress, does not present a Federal question.

Central Pacific Railroad Co. v. Nevada, 162 U. S. 512.

When there is no attack on a patent, a decision of a state court as to who is entitled to the land presents no Federal question.

Rogers v. Clark Iron Co., 217 U. S. 589.

The fact that parties claim under patents from the United States does not give the United States Supreme

Court jurisdiction of a question relating to the proper boundary between them.

Moreland v. Page, 20 How. 523.

> "The mere fact that the plaintiff in error asserts title under a clause of the Constitution, or an act of Congress, is not in itself sufficient, unless there be at least a plausible foundation for such claim. A party may assert a right, title, privilege or immunity without even color for such assertion, and if that were alone sufficient to give this court jurisdiction a vast number of cases might be brought here simply for delay or speculative advantage. *New Orleans Waterworks Co. v. Louisiana,* 185 U. S. 336."
>
> *Iowa v. Rood,* 187 U. S. 87, 92.

The Judgment Should be Affirmed, Even if the Record Shows Jurisdiction.

If it be found by this Court that our point that the writ of error should be dismissed for want of jurisdiction is not well taken, we respectfully submit that the judgment of the Minnesota Supreme Court should be affirmed on the ground that the writ was taken for delay only, and that the questions presented by plaintiff in error are frivolous on their face.

We regard these last two mentioned grounds as being interdependent, in that, if plaintiff in error's position is frivolous, it may be inferred that the persistent obstruction to our enjoyment of the property in question, interposed in the trial court and in the state supreme court, and attempted to be interposed in this Court, has not been made in good faith. We therefore address our argument specially to the ground of our

motions that the assignments of error are frivolous on their face.

All the rights claimed by the plaintiff in error rest on the federal statutes which have been hereinbefore set out. There is no pretense that the Interior Departmnt exercised any lawful authority except as the same depended upon those statutes.

The gist of the somewhat verbose and redundant assignments of error will be found to be a claim on plaintiff in error's part that, under the federal statutes mentioned, the patent issued to the Indian, howsoever improvidently issued in view of his admitted actual minority, concluded, not only the VESTING of title in him, but his right to CONVEY, without regard to the state laws.

That this is a frivolous contention, we respectfully submit, has been shown under our argument on the question of jurisdiction.

Assignments of error IV-VII are directed against the holdings of the Minnesota Supreme Court, as found in that court's opinion which is printed in full in the appendix hereto; the assignments merely presenting in varying forms the single objection already discussed—that the court below erred in deciding that the patent to the Indian was not conclusive as to his adulthood, so far as concerns the validity of conveyances from him.

Does it need further argument to sustain the correctness of the lower court's ruling as shown by the following language in that tribunal's opinion:

> "The claim of defendant is that the United States when it issued the patent found that the Indian was an adult, and that this finding is conclusive. It is true that there was this finding, as the law re-

quired that the patentee be an adult. *It is correct that the Indian's title could not be attacked on the ground that he was under age when the patent issued.* The patent is conclusive evidence of title in the patentee as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. *Steel v. Smelting Co.,* 106 U. S. 447, 1 Sup. Ct. 389, 27 L. Ed. 226. * * *

"*But there is no case holding that the validity of transfers by the patentee may not be attacked by showing his incapacity, for minority or any other reason, to make a valid transfer.* * * *

"When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the law of the state, not those of the federal government, control."

The court then proceeds to refer to the various provisions of the federal statutes hereinbefore discussed under which it is expressly provided that on issuance of fee simple patents, the allottees should become subject to the laws of the state, and that the exclusive jurisdiction of the United States should continue only "UNTIL the issuance of the fee simple patents."

As supporting the view adopted by the court below, we cite *Johnson v. Towsley,* 13 Wall. 72, holding that, although "action of the land office in issuing a patent * * * is conclusive of the legal title," after a patent has been issued title has passed beyond the control of the Federal Government. See, also, *Moore v. Robbins,* 96 U. S. 530, to the same effect.

AUTHORITIES ON FRIVOLOUSNESS OF WRIT.

Even though a federal question be presented, motion to affirm will be sustained when the assignments of error are frivolous.

Blythe v. Hinckley, 180 U. S. 333.

The question presented in the last cited case was whether an alien could inherit under the laws of California, plaintiff in error claiming that the California statute, permitting an alien to inherit encroached upon the treaty making power of the United States. The court said:

> "The sole question now remaining before us arises as to the claim made by plaintiff in error under the Constitution of the United States, already referred to, and * * * we now say that the provision of the Federal Constitution had no bearing in this case, and that the question is, in our opinion, entirely free from doubt.
>
> "Plaintiff urges that never before has the question been directly passed upon by this court. If he means that it has never heretofore been asserted, that in the absence of any treaty whatever upon the subject, the state has no right to pass a law in regard to the inheritance of property within its border by an alien counsel may be correct. The absence of such a claim is not so extraordinary as the claim itself. * * *
>
> "There has not been cited a single case where any doubt has been thrown on the right of a State, in the absence of a treaty, to declare an alien incapable of inheriting or taking property and holding the same within its borders. * * * The claim which the plaintiff in error founds upon the section of the Federal Constitution is too plainly without foundation to require argument."

The want of merit in the contention that a state statute limiting the amount of recovery is controlling in a suit arising under the Federal Employers' Liability Act is so well established by previous decisions of the Federal Supreme Court concerning the exclusive operation and effect of that statute over the subject with which it deals that the presence of such question in the case will not prevent the Federal Supreme Court from granting a motion to affirm the judgment on a writ of error to a state court.—*C. R. I. & P. Ry. Co. v. Devine,* 36 Sup. Ct. Rep. 27.

Although plaintiff in error places himself in the light of championing the cause of federal authority, it is readily to be seen that his attempted extension of that authority beyond the bounds of the doctrine of *res adjudicata* and beyond the bounds of authority self-imposed by the Government through Congress in the acts herein cited and discussed, would result in the defeat of the Government's fixed policy to guard Indians against their own improvident conveyance during actual minority. On the other hand, our position gives full respect to this policy without stretching the state's prerogatives beyond the point marked by Congress itself as the beginning of state jurisdiction.

Respectfully submitted.

MARSHALL A. SPOONER,
Attorney for Defendant in Error,
Bemidji, Minnesota.

Appendix

(Opinion of the Minnesota Supreme Court—157 N. W. 555, 556.)

BUNN, J. This is an action to determine adverse claims to certain real estate in Becker county. Plaintiff claims title to the property; while defendant Dickson insists that the title is in him. Both claim under the Indian Me-gis-way-waish-kung. The trial court decided in favor of plaintiff, and defendant Dickson appeals from an order denying his motion to amend the conclusions of law and order for judgment, or for a new trial.

The Indian is a mixed-blood Chippewa of the White Earth Indian reservation. The lands in controversy are within the reservation, and prior to April 24, 1908, were allotted to the Indian. On that day he applied for a patent to the lands in fee simple, and on August 6, 1908, this patent was issued by the United States to the Indian. The patent was recorded in Becker county November 16, 1908. Defendant Dickson claims title under two deeds from the Indian—one made April 24, 1908; the other January 17, 1910. Plaintiff claims title under two subsequent deeds from the Indian, dated, respectively, November 23, 1911, and July 2, 1912.

[1] The trial court found as a fact that the Indian was born in April or May 1889, and therefore was a minor at the time he gave the deeds under which defendant Dickson claims title. On the theory that the

Indian had a right to avoid these deeds after he became of age, and did so when he gave the deeds under which plaintiff claims, it was held that plaintiff had the title. The finding as to the age of the Indian is not assailed as being against the evidence, nor does defendant question the result reached, if it can be held that it was open to prove that the Indian was a minor. The claim of defendant is that the United States when it issued the patent, found that the Indian was an adult, and that this finding is conclusive. It is true that there was this finding, as the law required that the patentee be an adult. It is correct that the Indian's title could not be attacked on the ground that he was under age when the patent issued. The patent is conclusive evidence of title in the patentee as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. *Steel v. Smelting Co.*, 106 U. S. 447, 1 Sup. Ct. 389, 27 L. Ed. 226. Many other authorities might be cited to these propositions, but they are so well settled and undisputed that it is unnecessary.

[2] But there is no case holding that the validity of transfers by the patentee may not be attacked by showing his incapacity, for minority or any other reason, to make a valid transfer. There is no case holding that the finding of the Secretary of the Interior or the Land Department that the Indian is an adult settles this question for all purposes and for all times. It settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title.

[3] When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the laws of the state, not those of the federal government, control. The act of Congress of February 8, 1887 (24 Stat. at Large, 388, c. 199), and the act of May 8, 1906 (34 Statutes at Large, 182, c. 2348), provided that, when lands were conveyed to Indians by patent in fee, each and every allottee shall have the benefit of and be subject to the laws of the state or territory in which they may reside. The Clapp Amendment of 1906 (Act June 21, 1906, c. 3504, 34 Stat. 325) and 1907 (Act March 1, 1907, c. 2285, 34 Stat. 1015) provided:

"That all restrictions as to the sale, incumbrance or taxation of allotments within the White Earth reservation heretofore or hereafter held by adult mixed-blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple."

The suggestion that by the Clapp Amendment, Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the Acts of February 8, 1887, and of May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law.

It follows that the courts of this state are not precluded from inquiring into the age of an Indian patentee for the purpose of determining the validity of a conveyance from him, or for any other purpose save to im-

peach his title to the land. The conclusion necessarily follows that the trial court was right in holding that the question of the Indian's age was open in this case, and, the finding on that question not being attacked, the result reached by the trial court was clearly correct.

Order affirmed.

PLAINTIFF IN ERROR'S ASSIGNMENTS OF ERROR.

The said Petitioner, F. A. Dickson, Plaintiff in Error for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Minnesota, in the above entitled procedings, by Frank Healy, and Charles C. Haupt and Clyde R. White, his attorneys, at the same time with the presenting and filing of his petition for writ of error in the above entitled proceedings, states that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Minnesota, in the above entitled matter, there are manifest errors, in this,

I.

In said suit or proceedings in the Supreme Court of Minnesota there was drawn in question, as more fully shown in and by the record therein, the validity of the hereinafter designated and enumerated statutes of the United States, and the validity of the authorities exercised under the United States by the Secretary of the Interior, his subordinates, bureaus and departments, in

and about the issuing of the fee simple patent to the lands in said suit involved, and the decision and judgment of the Supreme Court of Minnesota were against the validity of such statutes and authorities and in favor of the validity of the statutes of the state of Minnesota, in this, that under and by virtue of such statutes and authorities of the United States the Indian to whom the lands involved in this suit were patented in fee, and through whom by subsequent mesne conveyances the plaintiff in error claims to have become the owner in fee of said lands, became and was, after the issuance of said fee simple patent, possessed of the absolute and unrestricted right and privileges to sell, incumber and convey said lands, the constitution of the State of Minnesota and its statutes and laws defining the age at which one becomes an adult and making conveyances executed by minors voidable at their option within a reasonable time after they attain their majority, to the contrary notwithstanding; and said decision and judgment by holding, as it did, that the aforesaid statutes and laws of the State of Minnesota, and not the aforesaid statutes of the United States and the aforesaid authorities exercised under them, governed, controlled, and regulated the conveyance of said land by said Indian after he secured patent in fee thereto, and by holding that under said statutes of the State of Minnesota the conveyance of said lands made by said Indian to the predecessors in interest and the grantors of plaintiff in error were voidable and were avoided by the later conveyances which said Indian made after attaining his actual majority to the defendant in error and its predecessors in interest and grantors, and that therefore the defendant

in error was the owner in fee of said lands, and that plaintiff in error had no right, title or estate in or to the same, denied to said statutes of and authorities exercised under the United States so much of their force and effect as plaintiff in error claims they possess in giving to said Indian the right to sell, incumber and convey said lands, and to that extent denied the validity of such statutes and authorities, in respect of all of which said Supreme Court of the State of Minnesota erred.

II.

In said suit or proceeding in the Supreme Court of the State of Minnesota there was drawn in question the validity of those statutes of the State of Minnesota which define an adult to be a person who has attained the age of twenty-one years and which make deeds and conveyances executed by a minor voidable at his election within a reasonable time after he attains his majority; and such statutes were, as plaintiff in error contended and argued, in said suit and proceeding, repugnant to the statutes and laws of the United States, among others, the Act of Congress of February 8, 1887 (Statutes at Large, 24-388) and the various acts amendatory thereof and supplementary thereto, and the Act of Congress of June 21, 1906 (34 Statutes at Large 325) as amended by the Act of Congress of March 1, 1907 (34 Statutes at Large 1015), and the Act of Congress of May 8, 1906 (34 Statutes at Large 182) under and by virtue of all of which the Indian patentee of the lands involved in this suit had and possessed an absolute and unconditional right to sell, incumber and convey his

said lands, the laws aforesaid of the State of Minnesota to the contrary notwithstanding; and in said suit or proceeding the Supreme Court of the State of Minnesota decided and held, in substance, that the conveyance by said Indian patentee were regulated and controlled by the said statutes of the State of Minnesota and not by the federal statutes aforesaid, and that under such statutes of the State of Minnesota the conveyance by the said Indian to the predecessors in interest and grantors of plaintiff in error were voidable at the option of said Indian patentee and had been by him avoided by his subsequent conveyances to the defendant in error and its predecessors in interest and grantors; and in all of these respects, therefore, the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of the said statutes of the State of Minnesota and against the validity of the said statutes of the United States, and was therefore erroneous.

III.

That said decision and judgment is, in substance and effect, against the rights, title and privileges of plaintiff in error in and to and about the lands involved in this action, which rights, title and privileges plaintiff in error claimed and asserted (1) under and by virtue of the Constitution of the United States, more particularly, (a) under Article VI, thereof which provides that "This constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the con-

stitution or laws of any state to the contrary notwithstanding," and (b) Section 3 of Article IV, which provides that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and also (c) Section 8 of Article I, which provides that "The Congress shall have power to regulate commerce * * * with the Indian tribes," and (2) under the laws and statutes of the United States, more particularly, (a) the Act of Congress of February 8, 1887, chapter 119 (24 Statutes at Large 388) and the various acts amendatory thereof and supplementary thereto, (b) the Act of Congress of June 21, 1906, (34 Statutes at Large 325), as amended by the Act of Congress of March 1, 1907 (34 Statutes at Large 1015), (c) the Act of Congress of May 8, 1906 (34 Statutes at Large 182) and (d) all other laws and statutes of the United States relating to, governing or affecting the matters in controversy in this suit, and (3) also under the commissions held and exercised by the Secretary of the Interior and his subordinates, bureaus and departments, under the United States, in and about the issuance of the fee simple patent to the Indian, as more fully shown by the records and proceedings in this case, which rights, title and privileges plaintiff in error, throughout the proceedings in the District and Supreme Courts of the State of Minnesota, specially set up and claimed under said constitution, statutes, commissions, and authorities; in this, that under and by virtue of the aforesaid constitution, statutes, commissions and authorities, the Indian to whom said lands were patented in fee and through whom plaintiff in error derived his rights, title and

privileges in and to said lands, became and was, from and after the issuance of said fee simple patent to him, possessed of the absolute and unrestricted right to sell, incumber and convey said lands the constitution and laws of the State of Minnesota relating to conveyance of real estate by minors, to the contrary notwithstanding; in respect of all of which said Supreme Court of the State of Minnesota erred to the injury of the plaintiff in error.

IV.

The said Supreme Court of the State of Minnesota in said suit or proceeding erred in holding, deciding and adjudging that "The issuance of a patent does not prevent the courts of this state from inquiring into the question of the Indian's age for the purpose of determining the validity of a conveyance by him," for the reason that under and by virtue of the constitution and statutes of the United States hereinbefore referred to and the commissions and authorities hereinbefore described, said Indian patentee while within the sole and exclusive jurisdiction of the United States, by the lawful exercise of the powers and authorities of federal officers thereunder became seized and possessed of the right to sell, incumber and convey his said lands, which right he possessed as a citizen of the United States beyond the power or authority of any state to remove, abridge or restrict; and the holding, decision and adjudication thus made, under the facts and circumstances of the case was against the title, rights and privilege of the plaintiff in error in and to and about the lands involved, all of which he specially set up and claimed under such con-

stitution and statutes and under the commissions and authority exercised by the Secretary of the Interior and his subordinates under such constitution and statutes.

V.

The said Supreme Court of the State of Minnesota in said proceedings erred under the facts and circumstances of this case in holding, adjudging and deciding that "Under the federal statutes after a patent in fee is issued to an Indian, questions as to the validity of his subsequent transfers of the land are controlled by the laws of the state," for the reason that under the constitution and statutes of the United States and by virtue of their necessary force and effect the Indian in this case, while under the exclusive jurisdiction of the United States was given and granted the absoluted and unconditional right to sell, incumber and convey the lands patented to him, and the necessary effect and consequence of such holding is to deprive plaintiff in error of his right, title and privileges in said lands which he specially set up and claimed in said suit under such constitution and statutes and the commissions and authorities exercised by the Secretary of the Interior and his subordinates, and said decision is therefore against such rights, title and privileges of the plaintiff in error.

VI.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances thereof, erred in holding, deciding and adjudging "It (the patent) settles it conclusively in so far as the right of the

Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title," for the reason that under the constitution and statutes of the United States and the commissions and authorities exercised by the Secretary of the Interior and his subordinates thereunder, the determination of such department that the Indian was entitled to a fee simple patent was necessarily a determination and adjudication that all restrictions as to the sale, incumbrance or conveyance of such lands were removed and the Indian patentee was thereafter entitled to sell, incumber and convey them; and hence the decision in question was against the right, interest and privilege of the plaintiff in error in and to the lands involved, which rights he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

VII.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances of the case, erred in holding, deciding and adjudging "When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the laws of the state, not those of the federal government, controlled. The Act of Congress of February 8, 1887, (24 Stat. L. 388) and the Act of May 8, 1906, (34 Stat. L. 182) provided that when lands were conveyed to Indians by patent in fee, each and every allottee shall have the subject of and be subject to the laws

of the state or territory in which he may reside. The Clapp Amendment of 1906 and 1907 (34 Statutes at Large 325, 1015) provided that 'all restrictions as to the sale, incumbrance and taxation of allotments within the White Earth Reservation heretofore or hereafter held by adult mixed blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple.' The suggestion that by the Clapp Amendment Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the acts of February 8, 1887 and May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law,"—for the reason that under the constitution and statutes of the United States and the commissions and authorities exercised under them by the Secretary of the Interior and his subordinates in and about the issuance of fee simple patent to the Indian, the Indian in this case by the determination of such officials and by his patent to these lands became seized and possessed of the absolute and unconditional right to sell, convey and incumber them, and by such statutes became and was a citizen of the United States, entitled to all the rights, privileges and immunities of such citizens, "without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property;" and hence the decision aforesaid was against the right, interest and privilege of the plaintiff in error in and to the lands

involved herein, which right he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

Wherefore, the said plaintiff in error prays that the said judgment and decision of the Supreme Court of the State of Minnesota be reversed and annulled, and that said plaintiff in error may be restored to all things that he has lost by reason of such judgment, and that judgment be rendered in favor of said plaintiff in error and against said defendant in error.

Dated June 16th, 1916.

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,
Plaintiff in Error,

AND

C. J. MINOR, F. A. DICKSON, AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN DESCRIBED IN THE COMPLAINT HEREIN,
Defendants,

VS.

LUCK LAND COMPANY, A CORPORATION,
Defendant in Error.

Brief of Plaintiff in Error on Defendant in Error's Motion to Dismiss or Affirm.

FRANK HEALY,
Minneapolis, Minn.,
CLYDE R. WHITE,
Minneapolis, Minn.,
CHARLES C. HAUPT,
St. Paul, Minn.,
Attorneys for Plaintiff in Error.

Review Publishing Company, 225 So. 3rd St., Minneapolis

INDEX.

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,
Plaintiff in Error,

AND

C. J. MINOR, F. A. DICKSON, AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

VS.

LUCK LAND COMPANY, A CORPORATION,
Defendant in Error.

Brief of Plaintiff in Error on Defendant in Error's Motion to Dismiss or Affirm.

STATEMENT OF FACTS.

This was an action in the District Court of Becker County, State of Minnesota, to quiet title to certain real estate situate in that County, and within the White Earth Indian Reservation.

A full statement of the facts will be found in the record and on pages one (1) to six (6) inclusive of the brief of the plaintiffs in error in the Supreme Court of the State of Minnesota.

Somewhat more briefly sketched the facts were these. George-wah-we-yea-cumig, or Me-gis-way-waish-Kung was a mixed blood Chippewa Indian of the White Earth Indian Reservation in Minnesota. Some time prior to April 24th, 1908, the lands in question were duly allotted to this Indian under and pursuant to the terms and provisions of the Act of Congress of February 8, 1887 (Chapter 119, 24 Stat. L. 388), and the various acts amendatory thereof and supplementary thereto. This allotment was duly approved by the Secretary of the Interior, September 13, 1907, and on February 6th, 1908, a *trust* patent was duly issued to the Indian pursuant to the aforesaid acts of Congress. We do not understand that defendant in error questions the validity or regularity of the proceedings of the government up to this point.

In 1906 and 1907 the so-called Clapp Amendment, 34 Stat. L. 325, 1915, was passed and amended, and as amended this provides,

> "That *all restrictions* as to the *sale, encumbrance* or taxation of allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by *adult mixed blood Indians* are hereby *removed,* and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the *title in fee simple,* or *such mixed bloods,* upon application, shall be entitled to receive a patent in fee simple for such allotments."

Under date of April 24, 1908, this Indian made application to the Superintendent and Special Disbursing Agent at White Earth, Minnesota, for a *fee simple patent* to such lands, and accompanied his application with his own and several other affidavits, among them those of his father and mother, alleging among other things that he was an adult, mixed-blood Chippewa Indian of the White Earth Indian Reservation in Minnesota; such proceedings were thereafter duly had before the Department that a fee simple patent was duly issued to the Indian on August 6, 1908, and this was spread upon the records of the Register of Deeds of Becker County on November 16, 1908.

Plaintiff in error and Defendant in error both claim these lands under different grants originally made by the Indian. Plaintiff in error claims under two Warranty deeds from the Indian which are prior to the deeds under which Defendant in error claims. Title by these first two Warranty deeds has become vested in Plaintiff in error by subsequent mesne conveyances.

Defendant in Error claims under two other warranty deeds from the Indian subsequent, both in date and recording to the two deeds above named, and title under said last two warranty deeds has been vested in defendant in error by mesne conveyance subsequent thereto. Upon the trial in the District Court, defendant in error offered evidence tending to prove that the Indian did not become of age until April or May, 1910, and plaintiff in error offered no evidence upon this point at the trial, but

relied upon the principles of law hereinafter asserted. If the question of the Indian's age was an open one in the case, then plaintiff in error's two deeds were given prior to the date at which by the evidence the Indian became of age, and were avoided under Minnesota law by his subsequent deeds to the grantors of defendant in error; but if the question of the Indian's age was foreclosed under the law, as we contend, then plaintiff in error should prevail. The determination of this question under the circumstances of the case involves rights of the plaintiff in error and the defendant in error under the statutes and constitution of the United States.

We shall not endeavor to brief these questions in full upon this motion, but only to the extent necessary to show that a federal question is involved, that the issue of law so presented is *bona fide*, and that plaintiff in error should have an opportunity to be heard in full and to brief carefully the points he claims. The court will observe from the allegations of the complaint of the defendant in error that the *land is vacant and unoccupied*, and that no harm can come to him from such delay as is necessary to a full and fair consideration of the questions involved in the appeal.

ARGUMENT, POINTS AND AUTHORITIES.

I.

A Federal Question is Involved in and Presented by this Appeal.

In the trial of this action in the District Court of Minnesota, as well as in the trial thereof in the Supreme Court of said State, plaintiff in error made the following claims and contentions and urged the following reasons and arguments, and now makes and urges the same here upon this appeal.

1. *The Clapp Amendment, supra, intended to and did confer upon adult mixed blood Indian Allottees of lands in the White Earth Reservation, in the State of Minnesota, to whom pursuant to its provisions patents in fee simple were duly issued, the absolute right to sell, incumber and alienate the lands so patented, the laws of the State of Minnesota making conveyances of real estate by minors voidable at their option within a reasonable time after attaining their majority, to the contrary notwithstanding; and the fee simple patents so issued are final and conclusive evidence of the right of such Indian patentee to sell, incumber and alienate such lands.*

(1) *Conditions at the date of the Clapp Amendment.*

Congress had by law (the Act of Congress of February 8, 1887, Ch. 119, 24 Stat. L. 388) provided a system of allotting to Indians in severalty lands

which had theretofore been held in common by Indian tribes. Section 5, of that act provided, in part, that the Indians to whom, pursuant to its provisions, lands should be allotted, should receive a *trust patent* which was to be of the legal effect and declare that "the United States does and will hold the lands thus allotted, for the period of twenty-five years, *in trust* for the sole use and benefit of the Indian, * * * and that at the expiration of such period, the United States will convey the same by patent to said Indian * * * in fee. And if any conveyance shall be made of the lands set apart, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be *absolutely null and void.*"

In construing this section of the Act of 1887, this Court held, in the case of *United States v. Rickert*, 188 U. S. 432, that neither the land nor the permanent improvements thereon, nor the personal property obtained from the United States and used by the Indian on the allotted lands, are subject to state or local *taxation* during the period of trust established by this section, and that the United States had such an interest in the matter as to entitle it to maintain a suit to restrain such taxation. The ground of the decision was, that to permit such taxation would result in the defeat of the trust relation of the United States, through the sale of such lands for taxes.

The purpose of this restraint upon alienation was the protection of the Indian against the superior

intelligence and greed of the white man.

Beck v. Flournay Live Stock, etc., Co., 65 Fed. 30; 69 Fed. 886.

Section 6 of the Act of 1887, as amended by the Act of Congress of May 8, 1906 (Ch. 2348, 34 Stat. L. 182) provided, in part, as follows::

> "That at the expiration of the trust period and *when the lands have been conveyed to the Indian by patent in fee,* * * * then each and every allottee *shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside;* and no territory shall pass or enforce any law denying such Indian within its jurisdiction the *equal protection of the law.* * * * Provided, further, *that until the issuance of fee simple patents,* all allottees to whom trust patents shall hereafter be issued shall be *subject to the exclusive jurisdiction of the United States.*"

The Act clearly indicates the purpose of the federal government to retain over the Indian its exclusive jurisdiction until the issuance of fee simple patents to him, prescribes the time when the Indian is to become subject to state law, and provides against discrimination against him by the State.

(2) *Purpose and Intent of the Clapp Amendment.*

The purpose and intent of the Clapp Amendment, the changed policy of the government towards the Indian as therein contained, and the reasons for the change in that policy are set forth by Judge Page Morris in the case of *United States v. Park Land Company*, 188 Fed. 383, as follows:

"Now, as I construe this Clapp Amendment, I take its language as I find it—all restrictions as to the sale, and so forth, for allotments within this reservation heretofore or hereafter held by adult mixed blood Indians are removed. *All restrictions are removed.* And the 'trust deeds' heretofore or hereafter issued by the department for such allotments are declared to pass title in fee simple. It seems to me, gentlemen, that the contention of Mr. Powell is sound, and that the amendment means just what it says, that *all restrictions are removed* as to these allotments held—no matter how held—held by adult mixed bloods. That, it seems to me is what it means. That is the only way I can read it, no matter how held. Therefore, no matter how the adult mixed blood has come to be the holder or owner of an allotment or part of an allotment, whether by selection, that is, as the original allottees, or by inheritance from a full blood, or by inheritance from an adult mixed blood, or by inheritance from a minor mixed blood, or by inheritance from a full blood minor, if there can be such an inheritance as that,—all restrictions are reserved as to the alienation of such allotment, or any part of it, held by an adult mixed blood. The trust patent is declared to convey to him, or rest in him —'pass' to him—if he is an adult, or as soon as he becomes an adult, the fee simple title *and he has the right to sell it without restriction.*

Now, let us see if we can find any reason for the policy of it. The act of 1902 removed the restriction upon alienation as to any heir of a deceased Indian, whether mixed blood or full blood, and whether the heir be adult or minor, to the extent of allowing a sale and conveyance of an inherited allotment, in case of an adult heir by himself, and in case of a minor heir by his guardian, with the approval or consent of the Secretary of the Interior. This, on the assumption, as it seems to me, as I have heretofore explained, that the heirs of one to whom

an allotment has been issued, and who has been put on the path of separate citizenship, and separate ownership, and separate responsibility in the struggle of life, would be more competent in many cases to manage their own affairs than would the original allottees have been and that the Secretary of the Interior should be the judge as to whether that condition has come about. Then, coming down to the so-called Clapp Amendment, *it seems to go a step further and say that when a mixed blood has come to an adult, he is competent to sell without being swindled, to make a proper bargain for his land, and to use the money that he gets out of it judiciously.* And the act seems to put his coming to the condition of an adult, as the time when that competency has come about. Not so, however, with the full-blood adult. As to him, Congress still restrains the restriction as to selling, incumbrancing, etc.; but, even as to him, the restriction is removed if the Secretary of the Interior is satisfied that he is competent to manage his own affairs. *In other words, it seems to me that by the Clapp Amendment Congress meant to say that it is conclusively presumed that an adult mixed blood is competent to go ahead and manage his own affairs, and therefore removed from him all restrictions on the sale of any allotment, or interest in any allotment, that he holds, no matter how it has come to him.* And, as to an adult full-blood, Congress means to say that, while he may also be competent to manage his own affairs, yet, we will leave it to the Secretary of the Interior to say whether he is or not."

(3) *Legal Status of the Indian.*

The legal status of the Indian, while anomalous in our jurisprudence, is pretty thoroughly settled and cannot require extensive citation of legal authorities.

"The Indian natives or tribes are *domestic*, semi-independent political communities owing a qualified subjection to the United States. They may be described as domestic dependent nations. They are not foreign nations, nor states in the international sense, nor states or territories within the meaning of the constitution. Their relation to the United States resembles *that of a ward to his guardian.*"

22 *Cyc.*, 117.

"An Indian is not a citizen of the United States by birth, because not born subject to the jurisdiction thereof. He cannot make himself a citizen without the consent and co-operation of the government. He may be naturalized either individually or through collective naturalization effected by treaty or statute."

22 *Cyc.*, 114.

"Whether any Indian tribe or members thereof have become so far advanced in civilization that they should be let out of *pupilage* * * * is a question to be decided by the nation whose wards they are and whose citizens they seek to become, and not by each Indian for himself."

Elk v. Wilkins, 112 U. S. 94.

"The Indians are *wards of the nation*, dependent upon it for their daily food and their political rights."

U. S. v Kagama, 118 U. S. 375.

"Indians residing on a reservation to whom allotments of land in severalty have been made, are yet wards of the nation, in a condition of pupilage and dependency."

United States v. Rickert, 188 U. S. 432.

(4) *General Principles of Law Appllicable to Land Patents*:

a. A patent to land, over the disposition of which the Land Department has jurisdiction, is

both the *judgment* of that Department as a *quasi-judicial* tribunal, and a *conveyance* of the legal title to the land:

Paterson v. Ogden, 141 Cal. 43; 74 Pac. 443.
L. Marshal v. Teagarden, 152 Fed. 662.
King v. McAndrews, 111 Fed. 860.
James v. Gen. Iron Co., 107 Fed. 597.
New Sunderberg Mining Co. v. Old, 79 Fed. 598.
U. S. v. Winona & C. R. Co., 67 Fed. 948; 165 U. S. 463.
State v. Red Wing Lumber Co., 109 Minn. 185; 123 N. W. 412.

b. Such a patent of the Land Department is conclusive in a Court of Law as against all persons whose rights did not commence previous to its emanation, as to all matters of fact necessary to its issuance.

Steele v. St. L. S. & R. Co., 107 U. S. 447.
Davis v. Weibold, 139 U. S. 507.
Lee v. Johnson, 116 U. S. 48.
Johnson v. Tonsley, 13 Wall. 72.
Warren v. Van Brunt, 19 Wall. 646.
Shepley v. Corran, 91 U. S. 330.
Moore v. Robbins, 96 U. S. 530.
Marguez v. Frisbie, 101 U. S. 514.
Quimby v. Conlan, 104 U. S. 420.
Vance v. Burbank, 100 U. S. 514.
St. Louis Smelting Co. v. Kemp, 104 U. S. 636.
Baldwin v. Starks, 107 U. S. 233.
United States v. Minor, 104 U. S. 447.

c. A patent to land is conclusive evidence as to the land conveyed by it.

Knight v. Leary, 54 Wis. 459; 11 N. W. 600.

d. A patent to land is conclusive as to the qualifications of the person to whom it is issued.

Kansas City Mining Co. v. Clay, 3 Ariz. 326; 29 Pac. 6.

e. A patent is conclusive as to the title of the patentee.

Gibson v. Choteau, 13 Wall. 92.

f. A patent is conclusive as to the performance by the patentee of the conditions precedent to his right to the patent.

Jenkins v. Gibson, 3 La. Ann. 203.

Chapman v. School Dist., 134 Pac. 474.

(5) *Observations as to the patent and its Issuance under the Clapp Amendment.*

a. The patent to Me-gis-way-waish-Kung was issued under and pursuant to the Clapp Amendment. (See Record, pp. 147-150-143-145).

b. The Secretary of the Interior was the proper official under the Clap Amendment and other acts of Congress, to whom to apply for fee simple patent.

Sec. 5, Act 1887, *supra*.

Act of May 8, 1906.

Act of June 21, 1906.

c. In determining whether fee simple patent should issue to Me-gis-way-waish-Kung, the proper federal official necessarily had to pass upon the following questions, and necessarily determined them in the affirmative:

(a) Is the land applied for within the White Earth Reservation in Minnesota?

(b) Is Me-gis-way-waish-Kung an adult?

(c) Is Me-gis-way-waish-Kung a mixed blood Indian?

(d) Were the lands applied for previously allotted to him?

d. Evidence that Me-gis-way-waish-Kung was an adult was submitted to the federal authorities (Record, pp. 117, 121, 126, 132).

e. Federal authorities, since they issued a patent to Me-gis-way-waish-Kung, necessarily found and determined that he was an adult, and a mixed blood.

(f) The issuance of patent in the instant case differs from the issuance of patents in ordinary cases in these particulars: (a) The relation between the federal government and the patentee is that of guardian and ward; in the issuance of other land patents there is no such relation, and the federal government has no such relation or duty to the patentee. (b) The issuance of the patent in the instant case is followed by consequences which do not follow in the ordinary case. Here the issu-

ance of the patent is followed by the termination of the exclusive jurisdiction of the United States over the patentee and his subjection to State laws. This is not true in case of issuance of patents in cases other than to Indian lands. (c) In cases of the issuance of patents in other cases, the contractual rights and privileges of the patentee in respect to the patented lands are determined by the laws of the State or territory in which he resides and not by the laws of the United States, and bear no relation to the issuance of the patent. The contrary is true here. (d) In other cases the determination of age may be merely incidental to the issuance of the patent. In this case such determination is for the additional purpose of determining whether or not the right to sell and incumber the land shall be given to the patentee, and the guardianship cease. It is clear, therefore, under general principles of law and the effect of the Clapp Amendment as hereinafter noted, that the patent to the lands here involved was final and conclusive evidence, in all matters affecting said lands, that Me-gis-way-waish-Kung was an adult at the date of its issuance.

g. The authority exercised by federal officers in determining this Indian's age and his right to sell and incumber his land, and in issuing the patent thereto was an "authority exercised under the United States," and by denying to such determination and patent the force and effect claimed by plaintiff in error, and by assigning to the law of the State of Minnesota respecting conveyance by mi-

nors the force and effect which it did, the Supreme Court of Minnesota denied the validity and force of such authority and patent.

h. The rights which defendant in error claims did not commence prior to the emanation of the patent to the Indian, but subsequent thereto.

(6) *Deductions and Observations Concerning the Clapp Amendment.*

a. The Clapp Amendment evidences the settled conviction of the Congress that adult mixed blood Indians to whom allotments of land in the White Earth Reservation in Minnesota had been or should thereafter be made, had, under and by virtue of the guardianship and tutelage of the federal government to which they had been subject since 1887, so far advanced in intelligence and experience as to have the right and opportunity to manage his own affairs and to sell or incumber his land, if need be.

b. The Congress was, under the Constitution and laws of the United States the sole and exclusive judge upon that question.

Act May 8, 1906, Ch. 2348, Stat. L. 182.
United States v. Holliday, 3 Wall. 407.

In the *Holliday case,* the court said, "neither the Constitution of the State nor any act of the legislature can withdraw Indians from the influence of an Act of Congress which that body has the constitutional right to pass concerning them."

c. The restrictions which were removed by the Clapp Amendment were "*All* restrictions as to sale, encumbrance or taxation." Whatever restrictions of this character there were, were "hereby removed." *If* there were any restrictions by the State they were removed thereby. Since the state was without jurisdiction until the issuance of fee simple patents, we think there were no such restrictions and that the restrictions which were removed were those imposed by the Act of 1887 as construed in *U. S. v. Rickert.*

d. The Clapp Amendment obviously was intended to and did give to adult mixed blood Indians the right to sell and incumber the lands which had been or should thereafter be allotted to them in the White Earth Reservation in the State of Minnesota. This result was accomplished as effectively as though the act had said that such Indian should have such right. The "removal of all restrictions upon the right to sell or incumber" is necessarily the grant of the right to sell and incumber. No other construction could be imagined and none has been suggested by defendant in error. So far, therefore, as it lay within the power of the United States, the right to sell and incumber such lands had been conferred upon such Indians.

e. The Clapp Amendment was passed in the same year and only a few months after Section 6 of the Act of 1887 was amended to read as above quoted, and it is only fair to presume, in the light and understanding of that Amendment. It is note-

worthy, that the termination of exclusive federal jurisdiction was made to depend upon the issuance of patent in fee, and not by the mere arrival of the Indian at the age of twenty-one years. Before patent in fee simple could be issued the patentee had to be of age, and his age would have to be determined by the federal authorities. This determination, which involved the cessation of federal exclusive control and guardianship, could not be and was not left to state authorities.

f. The right of sale and incumbrance thus conferred upon Indians in respect to these allotments, by this Clapp Amendment, and fee simple patent, could not be restricted, modified or abrogated by the state law concerning conveyances of real estate by minors, unless by the specific authority or consent of the Federal Government. The person of the Indian and the lands allotted to him were, in respect to this right, within the sole and exclusive power and jurisdiction of the federal government. It was solely within the power of that government to say when and upon what terms, and by whose adjudication the right should be conferred, or how long it should be withheld. The only question, therefore, is whether or not the federal government at the time of and after passing the Clapp Amendment intended that the right of sale and incumbrance which it had thereby conferred should be restricted or postponed by the state in which the Indian's lands lay. This question in another form, is this: Did the federal Congress by the passage of the Clapp Amendment and the due issuance of a fee

simple patent thereunder, at a time when the laws of the state where the patented lands lay provided that conveyances of land by minors should be voidable at the option of the minor within a reasonable time after the minor became of age, intend to consent to the extension by the State of restrictions upon alienation to such future time as when the State should determine the Indian was of age? Such intent is not consistent with the obvious purpose of Congress to confer upon Indians by this Act the right of sale and incumbrance. Moreover, the age at which Indians become adults is the same under state and federal law. The assumption that Congress contemplated or intended to acquiesce in a further period of incapacity of the Indian to convey by virtue of this state law, necessarily involves that Congress should assume that federal officers would not properly or truly determine the Indian's age in issuing patent to him, for in no other way could this further period be predicated. The last assumption is, of course, absurd. Furthermore, the state's right to tax the land of the Indian must of necessity date from the issuance of the patent. The State cannot and is not given the power to determine the Indian's age for that purpose, for to give the state such power would be to defeat the exclusive jurisdiction and trusteeship of the United States. The power to preserve such jurisdiction and trusteeship can only be conserved by the retention by the United States of the power to determine and adjudicate the Indian's age. Congress would very naturally presume that the state which

accepted the determination of the Indian's age by federal authorities for the purpose of taxing his lands would accept it for the purpose of permitting him to convey such lands.

Not only was the age at which the Indian's disabili' ceased the same under state and federal law, but the statutory purpose of the disability was the same in both instances, namely, the protection of the Indian from the results of improvidence due to his immaturity and lack of experience. There would be, therefore, no added reason for the enforcement by the State of a restriction which was exactly identical with the one which Congress had just removed.

Undoubtedly, the state has the power to regulate the subject of conveyances of real estate. This is a part of the internal policy of the State with which Congress has no right to interfere; but the Indian and his land, at the issuance of the patent to him, were both within the exclusive jurisdiction of the United States. When and where and how the Indian and his land should become subject to state law was exclusively in the power of the United States to say, and when the state assumed jurisdiction of the Indian and his land, it could be only upon the terms imposed by the United States. Moreover, the construction of the Clapp Act and patents issued in pursuance of it which we here contend for does not involve any interference in the internal affairs of the State by Congress; the state still retains the power to regulate conveyances of land by minors. It is, however, prevented, by such construc-

tion, from saying that an Indian, whose adulthood and right to sell and convey land has been adjudicated by the United States, while yet the Indian was within its exclusive jurisdiction, is not in fact an adult. The character of adulthood has been imprinted on the Indian, so far as such lands are concerned, by the United States when it turned him over to the State, in just the same way as citizenship is conferred upon him, and exactly as freedom was engrafted on the negro and the States obliged to accept the negro in that new character. The State accepts this characteristic of the Indian when it taxes his land; must it not accept it when he desires to convey it?

It is urged by defendant in error that "when the lands have been conveyed to the Indian by patents in fee, * * * then each and every allottee shall * * * be subject to the laws, both civil and criminal, of the state or territory in which they may reside," and that, therefore, the laws of the State of Minnesota respecting conveyances by minors were, by Congress, intended to have the precise effect in the instant case which it contends for. This is but another way of restating the question which we propounded in the beginning, and all that has been said heretofore applies to refute it. The construction contended for assumes that Congress, intending to confer the right to sell and convey his land upon the Indian, nevertheless enacted that the state should be able to revoke or postpone the exercise of the right, or in other words, that Congress simply intended to turn over the guardianship of the In-

dian to the state. The difficulty with the argument of defendant in error from this clause of Section 6 is that to give the argument effect in the way and to the extent contended for, necessarily involves or calls in question the validity of the Act of the federal government by which the clause in question becomes operative. It becomes operative by the federal adjudication of adulthood involved in the patent. The State cannot accept the determination of the Indian's age by the federal government for the purpose of making the Indian subject to state law, both civil and criminal, and deny the correctness of that determination when the Indian seeks to convey his land. Or, otherwise stated, the claim made by defendant in error, that Congress has provided in the foregoing language that the Indian becomes subject to state law as soon as a patent is issued, and that under that state law minors' conveyances of real estate are voidable to his benefit in this case, is merely reasoning in a circle, for unless the Indian is an adult, he is not subject to that law, and he can only become subject to that law by the determination or adjudication of his adulthood by federal authority; hence, if he cannot become an adult by federal adjudication, he cannot become subject to the state law. It is evident, therefore, that he can never become subject to that particular state law to the extent of being deprived of his right to convey. Re-stated, the federal determination or adjudication of the Indian's adulthood (it is the only determination or adjudication of that fact logically possible under the circumstanc-

es) cannot be invoked and accepted to make the Indian subject to the state law which makes conveyances of land by minors voidable within a reasonable time after they attain their majority, and then rejected to permit the state to determine and adjudge that he is a minor and his conveyance voidable. Yet this is precisely what defendant in error contends for. To conclude on this point, the contention which defendant in error makes upon the language quoted from section 6 of the Acts, necessarily involves the tacit admission that the Indian was of age.

g. The Clapp Amendment first provides that "the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass title in fee simple"; it then adds, "*Or* such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments." The last clause quoted adds nothing to the situation, if the Indian's age and right to convey are to be held open to attack after the issuance of patent in fee.

It is a fundamental principle of statutory construction that Courts will try to give effect to every part of a statute. Plaintiff in error is of the opinion that the last clause of the Act was intended by Congress to have a definite effect and purpose. That purpose, he believes, was to furnish the Indian allottee indisputable record evidence of his right to sell and incumber his land, to furnish him not only with the evidence of his title to the lands, for the

Trust patent was adequate for that purpose, but to furnish him also with the certificate of the sovereignty from whom alone he could derive the right or by whom alone he could be deprived of it, that he did have the right to sell and incumber the patented lands. If this be not the purpose and effect of this last clause, then no adequate reason for its adoption can be assigned, for it accomplishes no result which the preceding clause of the Statute does not effect. If this be not its purpose and effect, then there is no means provided whereby the Indian who wishes to sell his lands can present them to a prospective purchaser with a clear record title. Unless the result and effect of this last clause and of the patent issued pursuant to it be as claimed by plaintiff in error, then the Indian's title to his lands must always rest in part in parol, and he must always establish his age and mixed blood character and his right to sell and incumber, by parol evidence, and must always be content to take the smaller purchase price, which goes with his inferior title. Unless our contention in this respect is right, there is no way by which the Indian, prior to selling his land, can have his age and right to convey adjudicated and determined. Neither the State nor the United States provides any other means to determine this right. It is true he can sell his land and that his age and his right to convey can be determined in actions similar to the present one between parties claiming under diverse grants from the Indian. This, however, is not a satisfactory method of determining those questions, for it necessitates

the questionable practice on his part of succesive sales, in order to obtain the value of his lands.

For the final determination of the Indian's age and right to convey, the federal government is admirably equipped. It has reared and educated the Indian as its ward and pupil, has kept rolls and records of his parents and ancestors, has become familiar with his mode of life and his methods of keeping and computing time, has supported, cared for and paid annuities to him, has maintained schools and instructors for him, and has access to all records necessary to the determination of his age and mixed blood character. On the other hand, the State in purely private litigation has no adequate means or equipment for determining these questions. We are therefore, of the opinion that it was the intention of Congress in adding this last clause to the Clapp Amendment to provide both the Indian and prospective purchasers of land with clear, indisputable record evidence of his adulthood, as well as to provide a fixed and certain date at which his emancipation from federal jurisdiction should take place and the subjection of his person to state laws and of his lands to state taxation should be brought about.

h. As generally indicating the purpose of Congress not to leave questions as to Indian age and mixed blood to determination by State authority, section 3 of the Act of May 27, 1908, Ch. 199, 35 Stat. L. 312, is significant. That section provides, "That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of

the Interior shall be conclusive evidence as to the questions of Indian blood of any enrolled citizens or freedom of said tribes and of no other persons to determine questions arising under this Act and the enrollment records of the Commissioner of the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman."

2. The foregoing claims were all presented to the Supreme Court of the State of Minnesota and that Court specifically held that "under the federal statutes, if a patent in fee is issued to an Indian, questions as to validity of his subsequent transfers of the land are controlled by the laws of the State," and again, "it, the patent, settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the Department has not attempted to adjudicate the capacity of the Indian to transfer his title."

It is therefore, obvious that the foregoing enumerated Statutes of the United States, together with validity of the authorities exercised by federal officers under them was drawn in question and that the judgment of the Supreme Court of Minnesota was against the validity of such Statutes, and authorities, and in favor of the validity of the Statutes of the State of Minnesota; it is also apparent that the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of the Statutes of the State of Minnesota, regulating conveyances by minors and against the validity of the aforesaid Statutes of the

United States. It is also clear that said decision is in substance and effect against and adverse to the rights, title and privileges which plaintiff in error claimed and asserted under the provision of the federal constitution under the laws of the United States and under the commissions held and exercised by federal officials in the issuance of the patent here involved and in the determination of the questions leading up to such issuance.

It is well settled that if a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all references to it, is as much against the right within the meaning of the federal statute under which this appeal is taken, as if it had been specifically referred to and the right directly refused.

Roby v. Colehour, 146 U. S. 153.

Chapman v. Goodnow, 129 U. S. 540.

Des Moines Navigation, etc., Co., v. Iowa Homestead Co., 123 U. S. 552.

II.

The questions presented by this appeal are not frivolous. The Clapp Amendment has never been construed in the particulars in which a construction is here sought. Plaintiff in error has a large and important interest, not only in the land involved in this suit direct, but also in the land involved in a similar suit in an adjoining county. The judgment in which the latter suit is, by stipu-

lation of the parties, to follow the final judgment in this case. Moreover, the settlement of the question of law primarily involved in this appeal is of vital importance to all within this State who are or who may hereafter become interested in real estate transferred by Indians. And the determination of that question here will set at rest finally, all doubt and uncertainty with respect to such questions.

If there is anything frivolous about the appeal, it would seem to the mind of counsel for the plaintiff in error, that it rests upon the other side of this case. Counsel for plaintiff in error finds it difficult to understand why, when the federal government under whose sole and exclusive gaurdianship and tutelege an Indian allottee has been, has passed an Act whose obvious purpose is to remove from the Indian those restrictions upon his right of alienation, which theretofore existed, and has provided that a fee simple patent may be had by him upon application therefor, when he becomes an adult, and when the duly authorized officials of that government have duly investigated the mixed blood character and the adulthood of the Indian applicant and have determined those questions in the affirmative,—under these circumstances, we find it difficult to conceive that a law of the State in which the land lies, which makes conveyances of minors voidable at their option within a reasonable time after they arrive at their majority should be held superior to the federal statutes which was enacted for the purpose of conferring upon the Indian allottee the precise right and privilege which the State

law would temporarily, at least, upon the construction of defendant in error, deny to the Indian; and it would seem to counsel for the plaintiff in error that when one who intends to purchase from the Indian the lands which have been so patented to him goes to the records of the County in which such land lies and finds there the patent so issued and finds the Clapp Amendment upon the Statute Books that such purchaser is entitled to say to himself that the only power which possesses the authority to impose or to remove restrictions upon the Indian has spoken on that subject and that it is not necessary to look farther for evidence of the Indian's right to sell and convey his land.

We, therefore, respectfully submit that the motion of defendant in error to dismiss the appeal or affirm the judgment of the Supreme Court of the State of Minnesota be denied.

Respectfully submitted,

FRANK HEALY,
519 Met. Life Bldg.,
Minneapolis, Minn.,
CLYDE R. WHITE,
509-14 Minn. Loan & Trust Bldg.,
Minneapolis, Minn.,
CHARLES C. HAUPT,
1015 Merchants Nat'l Bk. Bldg.,
St. Paul, Minn.,
Attorneys for Plaintiff in Error.

DICKSON *v.* LUCK LAND COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 600. Submitted December 6, 1916.—Decided January 8, 1917.

Issuance of a fee simple patent for an allotment in the White Earth Indian Reservation, Minnesota, under the clause of the Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1034, which declares that

such allotments when held by adult mixed-blood Indians shall be free of restrictions on alienation and patentable in fee, implies an administrative finding that the patentee was of age when the patent issued.

While this finding is decisive of the allottee's age for the purpose of sustaining his right to the title freed from the restrictions which Congress had imposed by the allotting acts, c. 119, § 5, 24 Stat. 388; c. 24, § 3, 25 Stat. 642, it does not conclusively establish his majority for the purpose of determining whether a deed of the land which he made after patent was subject, under the state law, to disaffirmance as a deed made in infancy.

The restrictions being removed and the fee simple patent issued, the allottee, pursuant to the Act of May 8, 1906, c. 2348, 34 Stat. 182, becomes subject to, and entitled to the benefit of, the laws of the State governing the transfer of real property, fixing the age of majority and declaring the disability of minors.

132 Minnesota, 396, affirmed.

THE case is stated in the opinion.

Mr. Frank Healy, Mr. Clyde R. White and *Mr. Charles C. Haupt* for plaintiff in error.

Mr. Marshall A. Spooner for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

A tract of land in the White Earth Indian Reservation in the State of Minnesota is here in dispute. It was allotted and patented to a mixed-blood Chippewa Indian, and both parties claim under him. The allotment was made under legislation providing that the United States would hold the land in trust for the period of twenty-five years and at the expiration of that period would convey the same to the allottee or his heirs by patent in fee discharged of such trust and free of all charge or encumbrance, and also that if any conveyance should be made of the land, or if any contract should be made touching the same, before the expiration of the trust

period such conveyance or contract should be absolutely null and void. 24 Stat. 388, c. 119, § 5; 25 Stat. 642, c. 24, § 3. Afterwards, upon the allottee's application, a fee simple patent was issued to him under a provision in the Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1034, declaring: "That all restrictions as to the sale, incumbrance, or taxation for [of] allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and . . . such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments." Following the issue of this patent, and on dates considerably separated, the allottee executed two deeds for the land, each to a distinct grantee. The plaintiff in this suit claims under the second deed and the defendant under the first. The object of the suit is to obtain an adjudication of these adverse claims. In the trial court the plaintiff prevailed and the judgment was affirmed. 132 Minnesota, 396.

In both courts the decision was put upon the ground that the first deed was made while the allottee was a minor and the second after he became an adult and that under the law of the State the deed given during his minority was disaffirmed and avoided by the one given after he became an adult. The only federal question presented or considered was whether the patent was conclusive of his having attained his majority at that time. The defendant contended that it was, but the ruling was the other way and the plaintiff was permitted to show the allottee's age by other evidence. The defendant concedes that, if the patent was not conclusive upon that point, the judgment must stand.

The validity of the patent is not assailed. On the contrary, both parties claim under it, one as much as the other. Nor is it questioned that the allottee received the full title freed from all the restrictions upon its disposal

which Congress had imposed. Thus the question for decision is whether the patent was to be taken as determining the allottee's age for any purpose other than that of fixing his right to receive the full title freed from all the restrictions imposed by Congress.

There is no mention of his age in the patent, and yet it must be taken as impliedly containing a finding that he was then an adult. This is so, because every patent for public or Indian lands carries with it an implied affirmation or finding of every fact made a prerequisite to its issue, and because the provision in the Act of 1907 made the majority of the allottee a prerequisite to the issue of this patent. But such implications, although appropriately and generally indulged in support of titles held under the Government's patents (*Steel* v. *Smelting Company*, 106 U. S. 447 450 *et seq.*), are not regarded as otherwise having any conclusive or controlling force. They are not judgments in the sense of the rules respecting estoppel by judgment, and we perceive no reason for giving them any greater force or influence than has been sanctioned by prior decisions.

The provision in the Act of 1907, under which this patent was issued, does not make for a different conclusion. In so far as it is applicable here, it does no more than to withdraw a particular class of allotments from the restrictions imposed by Congress and to authorize the immediate issue of fee simple patents for them. Although saying nothing on the point, it evidently intends that the administrative officers shall be satisfied in each instance before issuing the patent that the allotment belongs to the particular class; and so the patent when issued carries with it an implication that those officers found the allotment to be of that class. But the provision gives no warrant for thinking that this finding should have any greater effect or wider application than is accorded to the finding implied from the issue of other patents.

We conclude, therefore, that the administrative finding which this patent imports was not to be taken as decisive of the allottee's age for any purpose other than that of fixing his right to receive the full title freed from all the restrictions upon its disposal which Congress had imposed.

With those restrictions entirely removed and the fee simple patent issued it would seem that the situation was one in which all questions pertaining to the disposal of the lands naturally would fall within the scope and operation of the laws of the State. And that Congress so intended is shown by the Act of May 8, 1906, c. 2348, 34 Stat. 182, which provides that when an Indian allottee is given a patent in fee for his allotment he "shall have the benefit of and be subject to the laws, both civil and criminal, of the State." Among the laws to which the allottee became subject, and to the benefit of which he became entitled, under this enactment were those governing the transfer of real property, fixing the age of majority and declaring the disability of minors.

Judgment affirmed.